Supreme Court, U.S.
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MAY 5 1980
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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1505

ALBERT C. DREBIN and BUDGET-FILMS, INC., a California corporation,

Petitioners,

vs.

CYRIL RUSSELL, as TRUSTEE, *et al.*,

Respondents.

PETITIONERS' REPLY BRIEF.

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This Reply Brief is submitted only to urge realignment of the central and narrow issue which was assigned by Petitioner and somewhat obfuscated by Respondents in their Response Brief. The issue assigned may be simply stated as follows:

a) After expiration of copyright of a motion picture, may the owner of that motion picture copyright continue to use prints thereof under the terms of the grant without having that continued use constitute an infringement upon an underlying work from which that film was adapted?

The above question appears to have been answered in the affirmative in the case of *Rohauer v. Killiam Shows, Inc.*, 551 F.2d 484 (2d Cir. 1977) and as declared by the Congress under Copyright Revision Bill, 90 Stat. 2541 (1976) as cited in Petitioner's petition.

If the answer to that question is likewise affirmed by this Court, the next question would logically be;

b) If the film copyright holder had such continuing rights, would any successor in interest to prints of that film be likewise entitled to such continued use?

If it is found that purchasers of such prints were entitled to step into the shoes of the film copyright owner upon such purchase, then, the question may be properly put;

c) would there be a presumption of such succession of rights enuring to any possessor of such prints where the acquisition of such prints was found by the Court to have been presumably legal?

d) If the latter question is answered in the affirmative; would the possession of prints of ''Pygmalion'' by Petitioner which was held by the Ninth Circuit Court of Appeals to have been ''presumably legal'' and where there is no evidence to the contrary, entitle Petitioner to step into the shoes of the presumed predecessors, Metro-Goldwyn-Mayer Pictures, Inc. and Loew's, Inc., the respective producer of ''Pygmalion'' and the registered copyright holder of that film?

The last and crucial question would then be,

e) If Petitioner is deemed to have acquired the prints of ''Pygmalion'' ''legally'', would Petitioner's use of those prints have been lawful?

If the answers to the foregoing questions are all answered affirmatively, as Petitioner apprehends ought to be the case according to the said Congressional Act and the holding of the *Rohauer* case, then all of the material recited in Respondent's Brief should be considered as surplussage and irrelevant. This is not to say that most of the material therein would not have been disposed of in favor of Petitioner had there been a trial on the merits instead of summary judgment. However, a brief dispatch of certain of such material might be justified herein.

1. Petitioner does not claim any rights to ''intangible copyright interests'' to ''commit acts of copyright infringement.'' (Resp. Br. p. 10, item B.)

Petitioner only claims rights consistent with those set forth in *Rohauer* and said Congressional Act. Naturally, Petitioner would also urge that the film prints (NOT any rights to any underlying work) are in the public domain and may be used by any member of the public.

2. Petitioner does not claim that ''freedom of speech'' gives any right to commit ''acts of copyright infringement.''

The claim *is* made, however, that films have been determined by this Court to constitute a vehicle for expression, the character of which is protected under the First Amendment. Accordingly, denial of distribution rights of prints which might otherwise be subject to use under law, would amount to an abridgment of rights under that Amendment. (Resp. Br. p. 11 item ''C.'')

3. Petitioner does not claim that the film copyright expiration causes dedication to the public of any part of the underlying work. (Resp. Br. p. 12, item ''D.'') Petitioner only urges that the expiration of the film copyright will entitle those in privity with the film copyright owner (as in purchasers of prints in direct or mesne conveyance) may continue to use the prints of THAT film, even though new films may not be made.

4. Petitioner does not claim that ''the public will be denied access to film classics by upholding the decision herein.'' Petitioner does claim, however, that in denying all rights to all but Janus Films, Inc. will subject the public to usurious rental rates which will thereby deny a segment of the public access thereto because of financial stress.

5. Petitioner does not claim that it ever "did own any copyright interest in either the underlying or derivative works," but Petitioner does maintain that it should enjoy the rights as property owner successors, just as any purchaser should. The purchase was "presumably legal," as per the Ninth Circuit and arguments by Respondents to the contrary should not now be countenanced by this Court.

Respectfully submitted,

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Attorney for Petitioners.